

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications
Act of 1996

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CC Docket No. 96-98

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REPLY COMMENTS OF TELTRUST, INC. ON THE
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

TELTRUST, INC.

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SUMMARY

As discussed in its initial comments, Teltrust is an alternative provider of directory assistance and operator services, offering its services to telecommunications carriers including carriers that compete with incumbent local exchange carriers ("ILECs"). To further competition, the Commission should clarify that requesting telecommunications carriers can designate an alternative provider as their agent for purposes of obtaining access to ILEC DA and OS elements on an unbundled basis.

The Commission should find that an ILEC network element meets the impairment standard if the element's unavailability would materially diminish a competitor's ability to offer a telecommunications service in a competitive manner, or materially increase the cost of providing that element. For DA and OS UNEs, the materiality analysis should incorporate examination of both price and quality differences. Any task of identifying these differentials must include examination of the marketplace realities with respect to the provisioning of DA and OS.

There are a number of compelling reasons why alternative DA and OS providers are currently precluded from competing effectively against the incumbent local exchange carriers. These marketplace realities include:

- **Blocked Access.** ILECs enjoy unparalleled access to data concerning the vast majority of subscriber lines in the nation. This was acquired not by ILEC skill or ability to provide a better product but only because the ILEC was a monopoly service provider. Failure to make comparable access available to competitive local exchange carriers ("CLECs") and alternative providers relegates these providers to a less desirable status.

- **High Costs.** ILECs' current price structure for access to DA and OS information via tariff is prohibitively expensive for competing providers of DA and OS. Requiring the ILECs to offer competitive providers of DA and OS cost-based rates would soften the impact of this price squeeze.
- **Diminished Quality.** Customers of any service provider expect accurate, complete, and reasonably-priced DA and OS. Data about subscribers available from non-ILEC sources is updated less frequently and therefore may contain incorrect listings and may be less complete. Because there is no comparable alternative real-time source for DA and OS information, Teltrust and other third party vendors must have access to ILEC DA and OS UNEs. If competitive LECs cannot provide DA and OS services of quality comparable to that of the ILECs, either directly or through outsourcing providers such as Teltrust, competitive LECs would suffer a substantial marketplace impairment.
- **Lack of Brand Identity.** ILECs benefit from years of accumulated goodwill and recognition in the brand of service provided in their monopoly markets. New providers bear much higher promotional and marketing costs than the ILECs. Similarly, competitive LECs can only compete with the incumbent providers if they establish reputations and brand identity through their points of contact with the consumer: the provision of DA and OS services. To gain a reputation for reliability, accuracy and price, CLECs and their agents must have access to the same DA and OS that the incumbents use.

ILEC comments uniformly assert that there are plenty of DA and OS providers. While there are alternative providers, that is not the end of an impairment inquiry. Most alternative

providers serve niche markets and may provide service with fewer features than the ILECs. This is not because they are incapable of competing but because they must rely at least in part on ILEC databases to provide their services and ILECs make these available, if at all, at non-cost-based retail tariffed rates. At least one carrier, MCI Worldcom, states that it has chosen not to enter the market for wholesale DA and OS because it cannot compete against the ILECs vestigial monopoly power in the DA/OS market. While Teltrust has entered the wholesale market, it has experienced significant hardship in establishing itself as a result of the ILECs' tariffed pricing structure and virtual monopoly in reliable, updated directory information and ILEC reluctance to make access available on reasonable terms. For Teltrust to be a viable alternative to ILEC DA and OS, then, both DA and OS must be made available as unbundled network elements.

The comments of CLECs overwhelmingly demonstrate that DA and OS UNEs should be available on a nationwide basis. A rule of national application would promote certainty and uniformity and would speed carrier implementation. Case-by-case (or state-by-state) determinations would create uncertainty and would delay the availability of broad-based local competition. Particularly where, as with DA and OS, a national market has begun to emerge, the Commission should impose a national rule for unbundling these aspects of ILEC network features and functions.

Finally, the Commission must retain the sole authority to remove elements from the list of nationwide UNEs to prevent states from defeating the pro-competitive goals of the Telecommunications Act of 1996. The United States Supreme Court has made plain that the Commission -- and not the states -- is in the driver's seat when it comes to establishing the conditions for the introduction of local competition. Deferring to states seeking to remove items

from a national UNE list will only cause churn and uncertainty for CLECs and their suppliers. Similarly, the Commission should not adopt any automatic sunset provisions for its list of UNEs, but rather should reevaluate the continuing necessity of each UNE individually in response to actual marketplace conditions.

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**REPLY COMMENTS OF TELTRUST, INC. ON THE
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

Teltrust, Inc. ("Teltrust"), through its attorneys, hereby submits its Reply Comments in response to the Second Further Notice of Proposed Rulemaking ("Second Further Notice") issued in the captioned proceeding. As explained in its comments, Teltrust is a provider of directory assistance ("DA") and operator services ("OS") and offers services in competition with the incumbent local exchange carriers ("ILECs").^{1/} Teltrust and other third party vendors, however, cannot provide fully comparable services without reasonable and cost-effective access to the ILEC DA and OS databases.

I. The Act Entitles Telecommunications Carriers and their Agents To Obtain Directory Assistance and Operator Services as UNEs from ILECs.

In its initial comments, Teltrust demonstrated that the services it provides its carrier customers would be materially impaired by the withdrawal of DA and OS from the

^{1/} Teltrust is a diversified telecommunications company that has provided customized support services to the telecommunications and other industries since 1986. These services include national directory assistance, operator-assisted services, third party verification, back office support services, customer support services and network transmission services. Teltrust provides, or has the potential to provide, these services for a wide variety of customers, including incumbent and competitive local exchange carriers, long distance and cellular carriers, and other users, such as clearinghouses.

Commission's list of mandatory unbundled network elements, particularly if Teltrust cannot "stand in the shoes" of its carrier customers and obtain access to DA and OS as UNEs.^{2/} While the ILEC comments uniformly assert that DA and OS are available from parties like Teltrust, they nowhere acknowledge the service quality impact that a withdrawal of OS and DA as UNEs would have on CLECs who have chosen to outsource these functions to third party vendors. If the Commission excludes carriers and their agents from accessing the ILECs' directory assistance and operator services elements on an unbundled basis, it will block the most realistic prospect for competition in the market for wholesale DA and OS. Teltrust reiterates its recommendation that the Commission clarify that the unbundling obligations require the ILECs to make their unbundled network elements available to third parties who provide DA and OS as outsourced functions for requesting telecommunications carriers.

Competitive providers of DA and OS must rely on economies of scale and scope to provide reasonably priced DA and OS by serving numerous competitive carriers. Although the competitive providers' economies of scale and scope are by no means as vast as those upon which the ILECs can rely, many DA and OS providers have proved capable of aggregating enough demand, cutting enough expenses, and providing superior customer care to offer carriers reasonably priced DA and OS. Significantly, although Ameritech describes Teltrust as one of the "largest wholesale providers" of DA and OS,^{3/} Teltrust offers wholesale DA to CLECs only on a limited basis. As discussed in its comments, Teltrust simply cannot compete with ILECs'

^{2/} Teltrust hereafter refers to alternative DA and OS providers as agents of the CLECs requesting these UNEs or third party vendors providing these functions on an outsourced basis.

^{3/} Comments of Ameritech at 109.

DA wholesale pricing. ILECs refuse to treat Teltrust as the agent of a carrier in requesting access to ILEC DA and OS elements. Instead, Teltrust and other third party vendors are required by ILECs to purchase access at commercial tariffed rates.^{4/} The price differential between recreating DA services that are of comparable quality, or of reselling ILEC DA purchased at inflated tariffed rates currently prohibits Teltrust from competing widely in the wholesale DA market.

Without the ability to outsource DA and OS functions to providers like Teltrust, many competitive LECs simply would either have to raise costs significantly to provide the same level of customer service, or have to greatly reduce service quality. Neither alternative should be viewed as acceptable from the Commission's public policy perspective. Any regulatory framework that threatens to limit local or long-distance carriers' ability to make the choice to outsource DA and OS functions to providers like Teltrust would significantly and materially impair the price and quality of DA and OS that smaller competitors and new entrants could offer. This would also needlessly delay the development of full competition in the local services market. As a result, any rule changes made in this proceeding should expressly confirm that third-parties can act as the agents of "telecommunications carriers" for purposes of obtaining DA and OS as UNEs from ILECs. Any other result punishes CLECs that decide, for reasons of cost or efficiency, to outsource their DA and OS functions to alternative providers.

^{4/} Comments of Teltrust at 4, 8-9.

II. The Impairment Standard of Section 251 Is Satisfied If the Denial of an Unbundled Network Element Would Materially Diminish the Ability of a Competitor to Compete or Would Materially Increase the Cost of Competing.

Teltrust's comments recommended that the Commission find that a network element meets the Section 251(d)(2)(B) impairment standard if the element's unavailability would "materially diminish the ability of a competitor to offer a telecommunications service in a competitive manner, or materially increase the cost of providing that element."^{5/} Numerous other commenters agree that the Commission should adopt a materiality standard in considering impairment.^{6/}

The different methodologies other commenters have advanced to place some parameters on the statutory term "impairment" fully support the materiality standard advanced by Teltrust. MediaOne, for example, has suggested that the FCC recognize several factors as relevant in assessing impairment: (1) whether cost differences between ILEC elements and alternatives available to competitors are material when considered in relation to operating margins in the

^{5/} Comments of Teltrust at 6.

^{6/} See, e.g., Comments of MediaOne Group, Inc. ("MediaOne") at 8 (asserting that competitors' ability to compete is impaired under Section 251(d)(2)(B) if failure to obtain a requested UNE adversely and materially affects that ability); Prism Communications Services, Inc. at 15; AT&T Corp. ("AT&T") at 15-16; Excel Communications, Inc. ("Excel") at 6; Focal Communications Corp. at 4; Sprint Corp. ("Sprint") at 10-11; KMC Telecom, Inc. ("KMC") at 6; Level 3 Communications, Inc. ("Level 3") at 6; Cable and Wireless USA, Inc. ("Cable and Wireless") at 10-11; RCN Telecom Services, Inc. ("RCN") at 12; Competitive Telecommunications Association ("CompTel") at 9; Choice One Communications, et al. at 6-7. See also, e.g., Comments of Association for Local Telecommunications Services ("ALTS") at 25 (stating that, under the impair standard, unbundling is required if in the absence of such unbundling a CLEC's ability to compete would be materially diminished); CoreComm Limited ("CoreComm") at 19 (stating that if a competitor's ability to compete with the ILEC is adversely affected by the absence of a non-proprietary network element, the ILEC should be required to unbundle that network element).

local exchange market; (2) whether use of alternatives would allow competitors to offer service at a level of quality equivalent to service that would be possible with the use of the ILEC's element; (3) whether denial of access to an element will limit the geographic scope of coverage of competitor's services; and (4) whether denial of access to the ILEC's element would result in a material delay in competitors' ability to bring their services to market.^{7/} According to MediaOne, any material difference in cost, quality, geographic reach or timely availability of an element, or a combination of these, may justify the element's inclusion in the list of network functions that must be unbundled.^{8/}

Other commenters have proposed that the Commission consider as relevant the percentage price differentials among available alternative service sources as one factor in determining whether a material impairment exists. The Vermont Public Service Board suggests that a 5% price differential between the ILEC UNE price and the price of an alternative source vendor would meet the impairment standard.^{9/} The General Services Administration recommends a 10% price differential.^{10/} Teltrust agrees that price differentials represent an important component of the materiality standard; however, overall service accuracy and quality must also be considered as part of any materiality analysis.

To capture both the price and quality differentials that exist between ILECs and their competitors in DA and OS, as well as the other impediments to the development of competitive

^{7/} Comments of MediaOne at 8.

^{8/} *Id.* at 9.

^{9/} Comments of Vermont Public Service Board at 12.

^{10/} Comments of General Services Administration ("GSA") at 11.

markets in this area, the Commission should examine the interdependence of all non-ILEC providers on ILEC-provided DA and OS information.

III. Competitive Providers and Their Agents Should Have Access to Directory Assistance and Operator Services on an Unbundled Basis.

Teltrust and other commenters have noted that ILECs maintain significant advantages over competitive DA and OS providers that impact on any "impairment" analysis. These fall into several basic categories:

Blocked Access. As the Allegiance and MediaOne comments observe, the ILECs continue to maintain the vast majority of the subscriber lines and therefore serve as the primary source for the vast majority of data for all DA and OS database vendors.^{11/} This is true not because the ILECs possess greater skill or ability to provide a better product but only because the ILECs were monopoly service providers. Despite some ILEC suggestions to the contrary,^{12/} the overwhelming majority of directory listings continue to come from incumbent local exchange carriers.^{13/}

High Cost. Several commenters note that the ILECs' current price structure for resale is prohibitively expensive to provision competitive DA and OS.^{14/} As Teltrust explained in its initial comments, ILECs' tariffed rates for DA typically are five times as high as the rates available for direct access to the ILEC DA databases as a UNE and include an initial access fee

^{11/} Comments of Allegiance Telecom, Inc. ("Allegiance") at 23; MediaOne at 12.

^{12/} See e.g., Comments of Ameritech at 112 (CLECs are an increasingly important source of directory listings).

^{13/} See e.g., Comments of Allegiance at 23; Teltrust at 7.

^{14/} See, e.g., Comments of MCI Worldcom at 71-72.

of more than \$25,000, in addition to per inquiry fees and update fees.^{15/} Thus, under the ILECs' tariffed pricing scheme, a competitor (and particularly a competitor that uses a third party vendor as its agent) faces significantly higher costs than the ILEC.

This ILEC "price squeeze" is contrary to Commission precedent, which rejects a strategy of "predation that would involve the ILEC setting high prices for interstate exchange access services, over which the LEC has monopoly power, while its affiliate is offering 'low' prices for long distance services in competition with the other long-distance carriers.^{16/} More than a decade before the 1996 Act, the Commission cautioned that "[w]e must therefore be wary of any waiver request which appears to be premised in part on 'benefits' to be derived by BOCs [Bell Operating Companies] and their customers from squeezing out competitors."^{17/} The Commission concluded that it was not prepared to acquiesce in an interpretation of its rules "which allows the BOCs to use their monopoly position as the supplier of inter-office circuits to enter a currently competitive market and then unfairly eliminate local competition."^{18/} Previously, to avoid price squeeze effects in the paging market, the Commission required any wireline carrier providing

^{15/} Comments of Teltrust at 8-9. For additional information concerning gross price disparities between ILEC charges and their competitors, *see* Comments of MediaOne at 13.

^{16/} Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, *First Report and Order*, 12 FCC Rcd 15982, 16100 (1997).

^{17/} Petitions for Waiver of Section 64.702 of the Commission's Rules Filed by Pacific Bell, Souther Bell Tel., South Central Bell Tel., Southwestern Bell Tel., New York Tel., New England Tel., New Jersey Bell Tel. Northwestern Bell Tel., Pacific Northwest Bell Tel., and Ameritech Operating Cos., *Memorandum Opinion and Order*, 100 FCC 2d 1057 (1985).

^{18/} *Id.* at 1094.

paging service to fix its charges to radio common carriers for wireline facilities on the identical basis that it used to compute its own costs for its own paging service.^{19/}

In its review of ILEC merger requests, the FCC found that where a BOC possesses market power over local access, which is a necessary input to long distance service, the BOC may be able to effect a price squeeze by lowering its long distance rates and raising the rates for access that it and its long distance competitors must pay.^{20/} The Commission noted that "as long as the incumbent LEC is required to offer unbundled network elements and resale of retail services, an attempted price squeeze is unlikely to be an effective anti-competitive tool."^{21/}

Therefore, requiring in this proceeding that the ILECs offer competitive providers of DA and OS, such as Teltrust, access at cost-based rates would dampen the effects of this price squeeze. As MCI, Cox, and other commenters note, customers expect accurate, complete, and reasonably priced DA and OS; therefore, if CLECs cannot provide these services at reasonable parity with ILECs, either directly or through outsourcing providers such as Teltrust, competitive LECs will suffer a substantial marketplace impairment.^{22/}

^{19/} Rules, Policies and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service, *First Report and Order*, 89 FCC 2d 1337, 1346 n. 17 (1982).

^{20/} See e.g., Petition of Pacific Telesis Group and SBC Communications, Inc. for Transfer of Control, *Memorandum Opinion and Order*, 12 FCC Rcd 2624 (1997).

^{21/} The Commission has found that requiring independent LECs providing interexchange service to take service from their affiliates at tariffed rates, terms and conditions would somewhat deflect the risk of a price squeeze. Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order* in CC Docket No. 96-149 and *Third Report and Order* in CC Docket No. 96-91, 12 FCC Rcd 15756, ¶ 161 (1997).

^{22/} Comments of Cox at 34; MCI Worldcom at 71; CoreComm at 33; MediaOne at 11-12; AT&T at 128.

Diminished Quality. In theory, a competitive DA or OS provider could construct its own database from publicly available sources to avoid having to pay non-cost based tariffed rates for the ILECs' DA and OS databases. In reality, however, ILECs have unparalleled access to continuously updated customer information.^{23/} Non-ILEC sources are updated less frequently, may depend upon voluntary reporting of changes and may be less complete.^{24/} Non-ILEC sources such as yellow pages databases, scanned white pages listings, U.S. Postal service change of address forms, motor vehicle registration records and voter registration records, are generally updated just once a year.^{25/} Internet directories, which routinely rely on voluntarily supplied information, also may contain incomplete data and out-of-date listings.^{26/} In addition, the non-ILEC sources trumped up by the ILEC commenters as adequate substitutes to ILEC databases may not include unlisted numbers or may fail to note that a customer's number is unlisted. Since this information is known by the ILEC, a competitive provider of DA and OS is at a comparative disadvantage because it cannot distinguish between unlisted customers and non-existent ones, or

^{23/} See Comments of Cox at 32; MediaOne at 12; MCI Worldcom at 72.

^{24/} Comments of MCI Worldcom at 72.

^{25/} An annual update cannot keep pace with the 16.5 percent of the American population — 43 million people — who change residences during the year. See e.g., Geographical Mobility of People One Year and Older, by sex, between March 1996 and March 1997, Current Population Survey, U.S. Census Bureau (March 1997); available at <<http://www.bls.census.gov/cps/pub/1997/mobility.htm>> (visited June 9, 1999).

^{26/} In addition, many consumers do not have access to Internet directories at the point of sale. To query an Internet database, most consumers — if they have access to the Internet at all — will need to perform the following tasks: (1) dial their Internet Service Provider; (2) log on to the Internet; (3) visit an Internet directory website or perhaps several websites; (4) type in the query; (5) disconnect their Internet connection; and (6) dial the telephone number manually. Unless and until Internet access is always on and more widely available than at present, Internet directories are not a realistic means of either obtaining information or a significant source of competition to ILEC DA and OS.

may unwittingly divulge private information to the public. As a result, numerous carriers state that, without access to these ILEC elements, many competitive providers have no alternative but to offer DA and OS that is perceived by the ultimate customer as second-rate.^{27/}

Lack of Brand Identity. As established providers of DA and OS information, ILECs already enjoy the benefit of years of accumulated goodwill and recognition in the brand of service provided. New providers such as Teltrust bear much higher promotional and marketing costs than the ILECs. Similarly, competitive LECs can only compete with the incumbent providers if they establish reputations and brand identity through one of their primary points of contact with the consumer: the provision of DA and OS services.^{28/} To gain a reputation for reliability, accuracy and price — in other words, to compete effectively — CLECs and their agents must have access to the same DA and OS that the incumbents use.

Most competitive service providers agree that access to ILEC DA and OS elements is critical for competition and denial of access will impair actual and potential competition. These barriers to entry more than establish the material diminution in quality or increased cost needed to show that DA and OS satisfy the impairment standard of Section 251.^{29/} Thus, DA and OS as UNEs are necessary for competition to flourish and their unavailability materially impairs marketplace competition.

^{27/} Comments of Allegiance at 22; AT&T at 128-130.

^{28/} Comments of MediaOne at 12.

^{29/} See Comments of Cox at 34; Excel at 8; CompTel at 14. Teltrust agrees with the majority of commenters that noted that the impairment standard is the relevant statutory standard to be applied to all non-proprietary portions of ILEC networks.

Predictably, the ILECs downplay these significant issues that highlight their continuing dominance both in local telecommunications markets generally and in the DA/OS submarket in particular. They totally ignore the price and quality differentials that Teltrust and other commenters such as MCI Worldcom have documented.^{30/} SBC, Ameritech, Bell Atlantic, BellSouth and GTE, for example, cite the very existence of competitors like Teltrust as conclusory proof that the absence of UNE availability for DA and OS would not materially diminish the price or quality of competitors' DA or OS offerings.^{31/}

Incredibly, some ILECs even claim that barriers to competitive provision of DA or OS are low because inputs such as office space are relatively inexpensive. It is immaterial that the ILECs do not control the labor, real estate or computer markets when they maintain control of the most essential component needed to provide robust and commercially-attractive DA and OS: real-time information about subscribers updated on a continuous basis. Although Teltrust competes in the wholesale market that provides database information to CLECs, it has suffered from a lack of access to ILEC DA and OS elements at cost-based rates. Some ILECs state that land, buildings, telephones and people are readily available to potential new entrants in the DA

^{30/} Comments of MCI Worldcom at 70-72.

^{31/} Comments of Ameritech at 106-108; Bell Atlantic at 32; GTE at 50; BellSouth at 78; SBC Communications Inc. at 60. These ILECs use Teltrust as an example of an available DA/OS provider that should allow them to avoid their unbundling obligations under Section 251(d)(2). However, Teltrust, has demonstrated that it depends in part upon the ILECs for complete and accurate information to provide its services. Because of this reliance on the ILECs to provide essential data, competitors such as Teltrust require widespread and cost-based access to DA and OS elements.

and OS market and cite this fact as proof of ease of market entry.^{32/} Regardless of the number of employees Teltrust hires or the number of call centers that it operates, these assets mean very little if Teltrust cannot obtain accurate, reasonably priced DA and OS database information when it needs it from the ILECs.^{33/} The ILECs simply muddy the waters by focusing on irrelevant inputs.

The FCC should continue to require the unbundling of ILEC DA and OS regardless of the source of the ILECs' information. Cincinnati Bell Telephone Company, for instance, argues that an ILEC's DA and OS should not be unbundled when the ILEC obtains those services from a third party.^{34/} Adopting such a rule would allow ILECs effectively to block CLEC access to certain preferred ILEC vendors. Any such limitation would damage competition even more when the ILEC maintains an exclusive arrangement with the vendor by essentially eliminating any chance that CLECs or their agents could obtain the same preferential access to the ILEC database that the preferred vendor would presumably enjoy. By permitting these arrangements

^{32/} See e.g., Peter W. Huber and Evan T. Leo, *UNE Fact Report*, submitted with Comments of US Telephone Association, prepared for Ameritech, Bell Atlantic, BellSouth, GTE, SBC and US West, dated May 26, 1999. It should be persuasive to the Commission that some potential competitors, such as MCI Worldcom, have consciously chosen not to offer wholesale DA services because they concluded they could not compete with the ILECs' wholesale pricing for DA. See Comments of MCI Worldcom at 72. The actual preclusion of at least one reasonably efficient competitor from the market should itself establish the need for UNE availability for DA data.

^{33/} BellSouth mischaracterizes Teltrust's statements to the Securities and Exchange Commission regarding the absence of market entry barriers in the DA and OS submarkets. Comments of BellSouth at 79 (*citing* Teltrust SEC Form S-1A, filed July 8, 1998). These Teltrust statements concerned the ability of companies to compete with Teltrust in the provision of DA and OS *services* and did not address access to DA and OS *elements*, which are at issue here. Teltrust SEC Form S-1A at 12.

^{34/} Comments of Cincinnati Bell at 7.

CLECs and their vendors would be blocked from obtaining comparable information from any other source. The Commission should not allow ILECs to impede competition through the simple expedient of inserting a third party as a provider of DA or OS.

IV. Access to Directory Assistance and Operator Services on an Unbundled Basis Should Be Available Nationwide.

Directory assistance and operator services UNEs should be available on a nationwide basis. Only national unbundled rules can provide a reasonable level of uniformity and predictability in the marketplace.^{35/} National rules specifying DA and OS among the mandatory UNEs are necessary to provide new entrants the certainty they need to enter the local market broadly and rapidly.^{36/} UNEs for DA and OS particularly require a national rule because a competitor could theoretically provide DA and OS from any location in the country. As a result, even some ILECs concede that "a single national rule with respect to DA and OS may be warranted."^{37/}

National UNE access standards also would provide, in an administratively efficient manner, a core set of UNEs to competitors which would further the pro-competitive goals of the Act.^{38/} As other commenters observed, a minimum list of UNEs is vital for end users and will

^{35/} Comments of Cable and Wireless at 23 and 45; Competition Policy Institute at 4-6; CompTel at 23; CoreComm at 8; Covad Communications Co. ("Covad") at 3-6; Excel at 17; Illinois Commerce Commission ("Illinois Commission") at 2; KMC at 2; Level 3 at 2; MCI Worldcom at 5; MediaOne at 4; Net 2000 Communications, Inc. ("Net 2000") at 3-7; RCN at 3-4; and Sprint at 7-8.

^{36/} Comments of Competition Policy Institute at 5; Excel at 17.

^{37/} Comments of Ameritech at 55.

^{38/} Comments of KMC at 2.

help state regulators conduct arbitrations with multiple competitive carriers without the need to establish basic requirements for unbundling in each instance.^{39/} It also follows from the Commission's responsibility to identify which ILEC network elements should be unbundled that the Commission also should maintain national pricing standards applicable to UNEs.^{40/}

Consistent with its previous application of a cost/benefit analysis to regulation, the FCC must consider the costs of having a state-by-state approach to identifying UNEs.^{41/} The costs and administrative expense and potential delay in access would significantly outweigh any benefit. Regulation that would leave elements to be unbundled on a customer-by-customer, facility-by-facility, or state-by-state basis would result in repetitive and wasteful litigation.^{42/} Allowing UNEs to be established on a state-by-state basis would constitute a substantial entry barrier for CLECs.

Any regulation that leaves the initial determination of available UNEs up to any entity other than the Commission would be an abdication of the responsibility Congress conferred on the FCC to set the ground rules for competition. The Supreme Court correctly determined that the FCC, and not the states, are in the driver's seat for this purpose.^{43/} If the FCC decides that

^{39/} Comments of GSA at 4.

^{40/} Comments of ALTS at 86-87; CompTel at 24; Excel at 17.

^{41/} See e.g., Amendment of Part 32, Uniform System of Accounts for Telecommunications Companies, to Revise the Accounting for General Purpose Computer and Information Management Expenses, *Report and Order Terminating Proceeding*, 11 FCC Rcd 14277 (1996) ("We believe the additional costs that this rulemaking would place on carriers outweigh the benefits . . .").

^{42/} Comments of MCI Worldcom at 6-7.

^{43/} *AT&T Corp., et al., v. Iowa Utils. Bd., et al.*, 119 S.Ct. 721 (1999) ("We think that the grant in § 201 means what it says: The FCC has rulemaking authority to carry out the

some type of case-by-case or state-by-state approach to ILEC unbundling is required, that determination should be made during a periodic review to begin no sooner than two years from the time that national rules specifying a minimum list of UNEs are in place.

V. The FCC Should Retain Sole Authority To Remove an Element from the Nationwide List of UNEs.

The FCC should not only specify that DA and OS UNEs be made available on a nationwide basis, it should expressly decline to delegate any authority to the states to remove UNE items from the national list. Teltrust agrees with CompTel and several CLECs that have asserted the FCC must retain the sole authority to remove elements from the list of nationwide UNEs, although the FCC could consider the opinions of state commissions in reviewing any previous determinations.^{44/} The Commission should not allow individual states to defeat the benefits of national uniformity by eliminating items from the national UNE list.^{45/} Indeed, even some state utility commissions have explained that, for the UNEs to achieve their pro-competitive purposes, the power to remove elements from the list should be kept at the FCC. Specifically, the Illinois Commerce Commission, the Connecticut Department of Public Utility and the California Public Utilities Commission recommend that the FCC, rather than state commissions, determine whether items should be removed from the national UNE list.^{46/} The

'provisions of the Act,' which includes §§ 251 and 252 added by the Telecommunications Act of 1996.")

^{44/} Comments of CompTel at 53.

^{45/} See Comments of AT&T at 41; Cable and Wireless at 45-46; CompTel at 53; CoreComm at 10-11; Covad at 6-8; KMC at 3; Level 3 at 3; Net 2000 at 7; and Sprint at 8.

^{46/} Comments of California Public Utilities Commission at 7-9 (suggesting that the FCC should have control over the minimum national list and the states should have the ability to

Illinois Commission, for example, notes that if individual state commissions were permitted to eliminate items from the national list "during this crucial period of transition in the local exchange market, a competing LEC would be unable to obtain a standardized set of UNEs nationwide," thereby adversely affecting its ability to compete.^{47/}

Finally, Teltrust opposes removal of elements from the national UNE list based on any automatic sunset provision, such as a two-year period suggested by the United States Telephone Association ("USTA").^{48/} The mere passage of time or the occurrence of some pre-determined event will not, alone, remove the policy reasons Congress determined that ILECs should make portions of their networks available to competitors at cost-based rates. As the Illinois Commission has noted, moreover, determining an appropriate sunset date would prove extremely difficult.^{49/} Substantive review and the exercise of judgment by the FCC will be required to ensure that any items removed from the UNE list will not adversely affect competition. Thus, UNEs for DA and OS should not expire until the Commission concludes on a record of persuasive evidence, rather than based on ILEC assertions, that "competing suppliers . . . have equivalent access to the same data that the ILECs use, updated as frequently and at similar

add other UNEs or subtract any UNEs that the state had previously added); Connecticut Department of Public Utility Control at 3; and Illinois Commission at 3.

^{47/} Comments of Illinois Commission at 3.

^{48/} Comments of USTA at 46.

^{49/} Comments of Illinois Commission at 15-16. Rather than a sunset provision to determine whether elements can be removed, the FCC should, at most, establish periodic dates by which it would review the national UNE list. *Id.*

costs.”^{50/} Until vital DA and OS elements are available to competitors and their agents on roughly equivalent terms, truly competitive markets will not exist.

VI. Conclusion

By virtue of their decades-old monopoly in local telephone service, ILECs control the vast majority of subscriber lines and, as a result, most of the DA and OS information that competing carriers and consumers need. The Commission can promote competition by authorizing telecommunications carriers and/or their agents to access ILEC DA and OS features on an unbundled basis. Restricting UNE access would unnecessarily impede competition in the operator services and DA markets and, consequently, in the local exchange market.

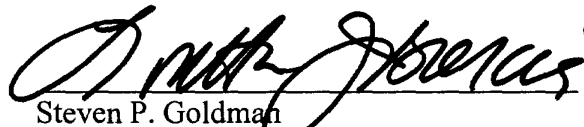
Teltrust and other commenters urge the Commission to find that a network element meets the Section 251(d)(2)(B) impairment standard if the element's unavailability would materially diminish the ability of a competitor to offer a telecommunications service in a competitive manner or materially increase the cost of providing that element. The FCC should make DA and OS UNEs available on a nationwide basis. National uniformity would greatly speed implementation and reinforce the development of competitive national markets for functionalities such as DA and OS which are not constrained by local or state boundaries. The Commission should retain the sole authority to remove UNE items from the national list. Finally, the Commission should not adopt sunset provisions for its UNE rules, but rather reevaluate the rules in response to actual marketplace conditions.

^{50/} Qwest Communications Corp. at 87.

For the reasons stated herein, the Commission should maintain the ILECs' obligation to provide unbundled access to their directory assistance and operator services elements, features and functions at cost-based rates and clarify that agents acting on a carrier's behalf should have the same rights of access to these UNEs.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Steven P. Goldman", is written over a horizontal line.

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June 10, 1999

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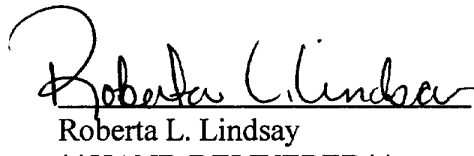
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